UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

CAUSE, STATEWIDE LAW ENFORCEMENT ASSOCIATION[1]

Employer

and Case 20-RC-18002

CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL 150, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

---

[1] The name of the Employer appears in accord with the stipulation of the parties.

[2] I take administrative notice of and include in the record as Board Exhibits 2 through 8, respectively, the following documents: as Board Exhibit 2, a copy of the Certification of Representative issued in Case 20-RC-17855 on June 13, 2003, certifying Teamsters Local Union #228, International Brotherhood of Teamsters, AFL-CIO (Local 228) as the representative of certain employees of the Employer; as Board Exhibit 3, the Certification of Representative issued by the State of California Public Employment Relations Board (herein called PERB) dated August 27, 1993, certifying the Employer as the representative of certain employees of the State of California (Unit 7); as Board Exhibit 4, a copy of the charge filed by the Employer in Case 20-CB-12210-1 on July 7, 2004 against

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a labor organization with offices and places of business in Sacramento and Westminster, California, is engaged in the business of representing employees in collective bargaining with employers. During the twelve-month period ending March 31, 2004, the Employer derived gross revenues in excess of $500,000, and purchased and received at its California offices, goods valued in excess of $5,000 which originated from points outside the State of California. Based on the parties' stipulation to such facts, I find that that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. No party contends that there is a contract bar to this proceeding. The Petitioner seeks to represent a unit comprised of all full-time and regular part-time employees employed by the Employer in its Sacramento and Westminster, California offices; excluding all guards and supervisors as defined by the Act. The petitioned-for unit consists of about 14 employees who serve as union representatives, legal

---

Local 228; as Board Exhibit 5, a copy of the dismissal letter issued in Case 20-CB-12210-1 on August 30, 2004, dismissing a portion of the charge; as Board Exhibit 6, a copy of the charge filed by Local 228 in Case 20-CA-32059, on September 2, 2004; as Board Exhibit 7, a copy of a letter dated November 29, 2004, from the attorney for Local 228 to Regional Attorney Joseph Norelli, disclaiming interest in representing the Employer's employees in the unit certified in Case 20-RC-17855; and as Board Exhibit 8, a copy of the letter approving withdrawal of the charge in Case 20-CA-32059, dated November 30, 2004.

representatives and support staff and who service the employees in the bargaining unit represented by the Employer.

The Employer's contends[3] that the petition herein should be dismissed on the basis that the Petitioner has a conflict of interest that disqualifies it from representing the petitioned-for unit, based on its relationship to Local 228, which is currently engaged in a campaign to decertify and replace the Employer as the collective-bargaining representative of a unit comprised of 7,000 State of California employees (Unit 7).[4] The Employer also contends that there is an inherent conflict of interest in the Petitioner representing its employees because the employees owe it a duty of loyalty in preventing Local 228's decertification campaign from succeeding, and they would have a conflicting loyalty to the Teamsters, including Petitioner, in the campaign to replace the Employer. The Petitioner takes the position that the petition should not be dismissed, arguing that there is no evidence to show that it will be disloyal to the bargaining unit or to show that the connection between Local 228 and the Petitioner is such that the Petitioner cannot act as an independent good faith bargaining agent on behalf of the employees in the petitioned-for unit. After carefully reviewing the facts and applicable case law, I find that the Petitioner is disqualified from representing the employees of the Employer and I am dismissing the petition.

---

[3] The parties have otherwise agreed to the appropriateness of the petitioned-for unit as well as the language for the direction of a *Sonotone* election for professional employees, based on the language used by the Region in conducting the election involving Local 228 in Case 20-RC-17855.

[4] As indicated in footnote 2 above, I have taken administrative notice of the certification of the Employer in Unit 7 by the California Public Employment Relations Board, and included a copy of the certification in the record.

I take administrative notice that on June 13, 2003, in Case 20-RC-17855, Local 228 was certified as the exclusive collective-bargaining representative of the Employer's employees in the following unit, which is essentially the same as that petitioned-for herein: [5]

> All full-time and regular part-time professional employees and non-professional employees employed by the Employer in its Sacramento and Costa Mesa, California offices; excluding all lobbyists, confidential employees, guards and supervisors as defined in the Act.

I also take administrative notice of the following relevant facts: On July 7, 2004,[6] the Employer filed a charge in Case 20-CB-12210, alleging that Local 228 had violated Section 8(b)(1)(A) and (3) of the Act by engaging in a campaign to decertify the Employer while at the same time representing its employees. By letter dated August 30, I dismissed the portion of the Employer's charge in that case, which alleged that Local 228 had violated Section 8(b)(3) of the Act by seeking to negotiate a collective-bargaining agreement with the Employer while at the same time seeking to decertify the Employer as the representative of Unit 7. I did so based on the fact that there was no evidence that Local 228 had failed to bargain in good faith with the Employer in violation of Section 8(b)(3), despite its alleged disqualification based on its decertification efforts against the Employer. That portion of the charge alleging a violation of the duty to represent employees in good faith in violation of Section 8(b)(1)(A) is still pending in the Region.

---

[5] There has been one change in the unit. Between the time that Local 228 was certified and Petitioner filed its petition in the instant case, the Employer relocated its Southern California facility from Costa Mesa to Westminster, California. I take administrative notice that these two cities are located about 13 miles apart. No party contends that the move affects the appropriateness of the unit, which is not disputed in this case.

[6] All dates herein refer to calendar year 2004 unless otherwise indicated.

On September 2, Local 228 filed Section 8(a)(1) and (5) charges in Case 20-CA-32059, alleging that the Employer was refusing to bargain in good faith. By letter dated November 29, Local 228 notified the Regional office that it disclaimed interest in representing the Employer's unit employees. The charge in Case 20-CA-32059 was withdrawn on November 30. The Petitioner filed the petition in the instant case on the same date.[7]

In the instant case, the parties have entered into the following stipulations, which I find to be facts in this case:

(1) Local 228 can no longer represent the Employer's employees because of the direct conflict of interest that arose out of the fact that it is attempting to decertify the Employer and represent the employees that the Employer currently represents.

(2) Since the decertification campaign by Local 228 began, there have been directives and instructions by the Employer's management to its staff, including talking points that they are to use to discuss the Employer's opinions of Local 228 business representatives with Unit 7 members. The Employer's opinions in this regard portray the business representatives of Local 228 in a negative light. Certain staff members of the Employer were unwilling to convey this information due to their affiliation with the Teamsters.

(3) International Brotherhood of Teamsters, AFL-CIO (the International) is assisting Local 228 in its decertification campaign by providing financial assistance and loaning organizers employed by the International to Local 228 for the purpose of collecting authorization cards and preparing to obtain the petition for the decertification of the Employer.

(4) Teamsters Joint Council 38 (the Joint Council) has jurisdiction over the geographic area in which the Employer operates (i.e., the Sacramento area).

[7] As noted above, I have taken administrative notice of and included in the record, a copy of the charges, disclaimer of interest letter, withdrawal letter and partial dismissal letter in Cases 20-CB-12210 and 20-CA-32059.

(4) Each local union of the International must pay a per capita dollar amounts for each of its members to the Joint Council and to the International.

(5) The Employer represents approximately 7,000 members.

(6) The Petitioner can ("can" meaning there is no prohibition under the law, under Teamsters' regulations or otherwise) provide assistance to Local 228's decertification campaign against the Employer.

(7) The International could request the Petitioner to assist Local 228 in its decertification campaign against the Employer.

(8) Jim Tobin is the Secretary/Treasurer and principal officer of the Petitioner and is also a political coordinator for Joint Council.

(9) Local 228 Business Representative Maria Carroll did not pass out authorization cards on behalf of Petitioner. The Petitioner's Secretary/Treasurer and principal officer, Jim Tobin, and Local 228 Secretary/Treasurer, Victor Shada, met with employees in the petitioned-for unit at the office of Local 228. At this meeting, Shada informed the employees that Local 228 could not represent them, and Tobin passed out authorization cards for Petitioner to the employees. [8]

[8] The Employer called no witnesses to testify at the hearing and the record in this case is comprised of stipulated facts, certain documentary evidence, and the following offers of proof made by the Employer that it could establish the following facts:

(1) Joint Council 38 is assisting in the Local 228 decertification campaign against the Employer.

(2) The Employer has a witness who can testify that he talked to a person who is employed as an organizer by a Teamsters local other than Local 228 and Petitioner, who is helping with the decertification campaign against CAUSE.

(3) Maria Carroll, a business agent for Local 228, has made promises to the Employer's employees in the petitioned for unit, that if the decertification campaign is successful, they will be given employment with Local 228.

(4) The Employer's staff has made statements that if they were to fight the decertification campaign by speaking against the Teamsters, they could possibly be blackballed by the Teamsters.

(5) Local 228 contacted Petitioner and informed Petitioner that it was disclaiming interest or would soon be disclaiming interest in representing the Employer's employees in the unit, and discussed that there may be interest among employees in being represented by Petitioner.

(6) Teamsters organizers in Southern California were aware there was conflict of interest in Local 228 representing the Employer's staff, and stated that Local 228 had solved problem by contacting another local union to represent the Employer's staff.

(7) If the Petitioner is certified as the collective bargaining representative of unit, it could request the Employer's staff to go out on strike.

The record includes a copy of the International's constitution and the Petitioner's by-laws. The International's constitution and the Petitioner's by-laws state the requirements for membership in the respective entities.[9] All members of the Petitioner are obligated to abide by the Petitioner's by-laws and the International's constitution with respect to the rights, duties, privileges and immunities created by them. Each member is obligated to "faithfully carry out the duties and obligations" set forth in the Petitioner's by-laws and the International's constitution," and to not "interfere with the rights of his fellow members."[10]

The Petitioner's by-laws also state that the International's constitution:

> Supersedes any provisions of these By-Laws herewith or hereinafter adopted which may be inconsistent with such Constitution and readopts such International Constitution and incorporates herein by reference, as though fully set forth herein, all such provisions of the International Constitution and all interpretations, modifications or amendments as shall be made from time to time which are applicable to local union matters or affairs. The local shall perform all duties imposed upon it by the International Constitution.

Pursuant to Article XV of the International's constitution, local Teamster unions in the same area are to form Joint Councils with the approval of the International's executive board. Joint Councils are created to help coordinate Teamster activities in those areas. They also help solve problems and decide certain judicial matters." Joint Councils have the authority under the International's constitution to issue directives to local unions. The International's constitution further provides that: "All local unions

[9] Article II, Section 2, International Constitution; Article VI, Petitioner's By-Laws.

[10] Article VI of Petitioner's By-Laws.

within the jurisdiction of the Joint Council shall affiliate with the Joint Council, comply with its laws and obey its orders."[11] Under the Petitioner's by-laws, it must submit any proposed collective-bargaining agreement it negotiates to the Joint Council for approval before submitting the agreement to an employer. All employees who are members of the International, pledge and agree to comply with the rules and regulations of the local union, the Joint Council and the International and to, "take an affirmative part in the business and activities of the Union and accept and discharge his responsibilities during any strike or lockout . . . and at all times to bear true and faithful allegiance to the International." Article IV of Petitioner's by-laws states that the objectives of the Petitioner include providing, "financial and moral assistance to other bodies having purposes and objectives in whole or in part similar or related to those of this organization," and "to carry out the objectives of the International Union as an affiliate thereof and its duties as such affiliate."

Members of the Petitioner are subject to disciplinary charges in accordance with the International's constitution and charges may be brought against Teamster members for violating any specific provisions of the International's constitution, local union by-laws, or for failure to perform any of the duties specified thereunder as well as for acts of disloyalty to the local or the International. Such violations may result in fines, suspensions, and expulsion from membership.

As indicated above by the stipulations of the parties, in opposing Local 228's decertification efforts, the Employer has directed its staff, including the employees in the

[11] Article XV, Section 6 (Affiliation of Local Unions). The International's Constitution states in its preamble that in forming the International, the local unions agreed to "subordinate some of their individual independence in order to obtain services, support, and expertise which none alone could provide but which all could obtain through coordinated action by the I International Union."

petitioned-for unit, to inform the Unit 7 members it represents of the Employer's negative views of Local 228 business agents and some of the staff members have refused to do so, citing their affiliation with the Teamsters.

Analysis. As indicted above, the Petitioner seeks to represent the unit formerly represented by Local 228. The Employer contends that the Petitioner is disqualified from representing the petitioned-for employees because it has a disabling conflict of interest resulting from its relationship to Local 228, which is currently attempting to decertify and replace the Employer. The Petitioner takes the opposite view, arguing that there is no evidence to prove that it would not represent the petitioned-for unit in good faith. For the reasons discussed below, I find that the Petitioner is disqualified from representing the petitioned-for employees and I will dismiss the petition.

As observed by the First Circuit, cases such as this, which involve alleged disqualifying conflicts of interest by labor organizations, present:

> . . . a number of conflicting objectives which must somehow be kept in balance. There is the right of employees under Section 9(a) of the Labor Management Relations Act (29 U.S.C. 159(a)) to have bargaining representatives of their own choosing. But there is the correlative duty of complete loyalty of such representatives to their constituents, *Ford Motor Co. v. Huffman et al*., 1953, 345 U.S. 330, 338, 73 S.Ct. 681, 97 L.Ed. 1048. On such a loyalty depends in large measure the 'reasoned discussion in a background of balanced bargaining relations upon which good faith bargaining must rest'. *Phelps Dodge Copper Products Corp*., 1952, 101 N.L.R.B. 360, 368.

N. L. R. B. v. David Buttrick Co., 361 F.2d 300, 305 (1st Cir. 1966).

The Board has long held that a union may not represent the employees of an employer if a conflict of interest on the part of the union exists such that a good-faith collective-bargaining relationship between the union and the employer could be

jeopardized. *Bausch & Lomb Optical Co*., 108 NLRB 1555 (1954). In *Bausch and Lomb*, the Board stated that a union "must approach the bargaining table . . . with a single-minded purpose of protecting and advancing the interests of employees who have selected it as their bargaining agent and there must be no ulterior purpose." In *Oregon Teamsters Security Plan Office*, 119 NLRB 207 (1957), the Board further stated that if "a union has allegiances which conflict with that purpose, we do not believe that it can be a proper representative of employees." See also *Teamsters Local 688 Insurance and Welfare Fund*, 298 NLRB 1085 (1990); *St Louis Labor Health Institute,* 230 NLRB 180 (1977). As further stated by the Board in *Western Great Lakes Pilots Ass'n,* 341 NLRB No. 36 slip op. (Feb. 27, 2004), "The crucial focus of analysis in these cases is the bargaining representatives' ability to pervert the collective-bargaining process, by operating through that process to directly promote interests ulterior to those of fairly and single-mindedly representing employees of employers with whom those bargaining representatives are bargaining."

The Board requires a showing of a "clear and present danger" of interference with the bargaining process in order to disqualify a union based on a conflict of interest. See *Alanis Airport Services,* 316 NLRB 1233 (1995). It is not necessary to prove an actual abuse of power or damages but rather it is necessary to establish "*an innate or proximate danger* of infecting the collective-bargaining process." *Medical Foundation of Bellaire,* 193 NLRB 62, 64 (1971), emphasis supplied; *Northwest Airlines Flight Attendant Union Local 2000*, 321 NLRB 1383 (1996); *Lake Pilots Association, Inc*., 320 NLRB 168, 179 (1995); *St. Louis Labor Health Institute, supra; Teamsters Local 249, supra*; *Teamsters Local 688 supra; Pony Express Courier Corp*., 297 NLRB 171 (1989); *Harlem River*

Consumers Cooperative, 191 NLRB 314 (1971). Because of the strong public policy favoring the free choice of a bargaining agent by employees, the burden is on the party asserting the disabling conflict and this burden is a heavy one. See *Guardian Armored Assets*, LLC, 337 NLRB 556, 558 (2002); *Garrison Nursing Home,* 293 NLRB 122 (1989), citing *Quality Inn Waikiki,* 272 NLRB 1, 6 (1984), enf'd 783 F.2d 1444 (9th Cir. 1986).

One of the types of situations long recognized by the Board as involving a disabling conflict of interest is one in which a union is a direct business rival of an employer. See *Baush and Lomb; Visiting Nurses Ass'n*, 188 NLRB 155 (1971); *Bambury Fashions*, 179 NLRB 447 (1969); *Douglas Oil Co.*, 197 NLRB 308(1972). For example, in *Bausch & Lomb*, the union representing the employer's employees had established and operated a company engaging in the same business and in the same locality as the employer, thus becoming its direct competitor. The Board held that the employer was not obligated to bargain with the union in this circumstance due to the "innate danger involved" to the collective-bargaining process from the union's special interest. Specifically, the Board's concern was that the union *might* take action to further its business interests rather than further the interests of unit employees. The Board noted that in a collective-bargaining relationship, it is to the benefit of all that the employer remain in business, but where the union is a competitor, it could derive benefit by causing a strike or driving the employer out of business. *Id; See also Guardian Armored Assets, LLC, supra,* 337 NLRB at 558. Therefore, according to the Board in *Bausch and Lomb*, the union's transformation into a business rival:

> Drastically changed the climate at the bargaining table from one where there would be reasoned discussion in a background of balanced bargaining relations upon which good-faith bargaining must rest to one in which, at best, intensified distrust of the [u]nion's motives would be engendered.

Id., 108 NLRB at 1561.

In the instant case, it is plain that Local 228 is a direct business rival of the Employer since it is attempting to decertify and replace the Employer. No more direct or substantial a business rivalry could exist than that between the Employer and Local 228. Indeed, if the decertification efforts of Local 228 succeed, the Employer will likely be put out of business, since Unit 7 constitutes its entire membership. Prior to its November 29 disclaimer of interest in representing the unit in Case 20-RC-17855, Local 228 plainly had a disabling conflict of interest based on its simultaneous business rivalry with the Employer and representation of the unit in Case 20-RC-17855.[12]

The issue in this case is whether Local 228's business rivalry and disabling conflict extends to the Petitioner in light of its assistance in introducing the bargaining unit employees to the Petitioner, and its relationship to the International and, in particular, to the Joint Council. In order to find that the Petitioner has a disabling conflict, I must find that there is a clear and present danger of an interference with the collective-bargaining process. And because of the strong public policy favoring the free choice of a

[12] In this regard, I note that it is not necessary for the decertification effort to succeed in order for Local 228 to be considered a business rival of the Employer and, before it disclaimed interest in representing the unit in Case 20-RC-17855, a union with a disabling conflict of interest with regard to that unit of the Employer's employees. Thus, in *Catalytic Industrial Maintenance Co*, 209 NLRB 641, 646 (1974), the Board found a disabling conflict of interest in a case where the union had proposed diverting bargaining unit work from an employer but had not succeeded in doing so. See also, *St. Louis Labor Health Institute*, 230 NLRB 180, 182 and n. 9 (1977), where it was deemed unnecessary to determine actual versus potential taint in order to find a disqualifying conflict in a situation where the union's conduct in fact constituted a taint.

bargaining agent by employees, the Employer bears a heavy burden to establish this clear and present danger. After carefully reviewing the record, I find that the Employer has carried its burden of establishing that "*an innate or proximate danger*" of interference with the bargaining process exists in this case. In so doing, I note that actual intervention by a Teamsters entity to bend the Petitioner's conduct towards furthering the decertification campaign is not required in order to find the existence of a clear and present danger in this case. See *H.P. Hood & Sons, Inc.*, *supra*, 182 NLRB at 195. Rather, in order to decide whether such a danger exists, I must examine the existence of the "power" to subvert the bargaining process, and the "temptation" of the involved Teamster entities to do so. *Id.*

With regard to whether the involved Teamster entities have the power to subvert the bargaining process, the record shows that Petitioner is a sister local of Local 228. Both locals are affiliated with the International and both belong to the Joint Council, which has substantial authority over them, as discussed above. The Secretary/Treasurer of the Petitioner is the political coordinator of the Joint Council. In other cases, the Board has examined this relationship among Teamster entities and made findings which are relevant to this case. Thus, in *Teamsters Local 249*, 139 NLRB at 605, the Board observed with regard to these Teamster entities that:

> Terms of employment, such as wages, rates, hours, and working conditions, are determined and negotiated separately by each local union. However, proposed agreements must be submitted to the Joint Council in certain instances, and final agreements must be submitted to the International for approval. Under the International's constitution, where it is informed of a proposed execution of a contract which provides for working conditions or wages less than those prevailing in the area, the International may prevent the execution of this contract. Also, the International is

> empowered to take disciplinary action when it finds that a local without good cause executes agreements which adversely affect members of the International. If member locals of the Joint Council decide to bargain on a multiunion basis, the bargaining arrangements and the method of ratification of the contracts are determined by the local so affected, but must be in accordance with the constitution of the International. Grievances are handled by the locals, except that the Joint Council participates in grievance machinery in over-the-road and city freight area-wide agreements. . . . Also, member locals of the Joint Council must pay a monthly per capita tax to the Joint Council.

In *Teamsters 249*, the Board found that this connection created a disqualifying conflict of interest making one Teamster local not competent to bargain on behalf of employees of another Teamster local, stating that "a union which has allegiances conflicting with the purpose of protecting and advancing the interest of the employees it represents, . . . cannot be a proper representative of these employees." *Id*. at 607; see also *Oregon Teamsters Security Plan Office*.

In a subsequent case, *David Buttrick Co*., 167 NLRB at 438 (1967) enf'd sub nom *NLRB v. David Buttrick Co*., 399 F.2d 505 (1st Cir. 1968),[13] the Board analyzed the constitutional powers which the International and its general president could bring to bear on the bargaining conduct of a Teamster local. The Board in *Buttrick* found that these powers "permit[ted] only a limited entry into Local bargaining activity," and that there was no evidence that the limited powers had ever been utilized to shape or alter the course of . . . bargaining" of the local involved in that case. *Id.; H. P. Hood & Sons, Inc.,*

[13] This case was the subject of related litigation. See *David Buttrick Co*., 154 NLRB 1468, remanded 361 F.2d 300 (1st Cir. 1965), *David Buttrick Co., supra*; *H. P. Hood & Sons, Inc*., 182 NLRB 194 and n 2.

182 NLRB 194, 195 (1970).[14] In *H.P. Hood & Sons, Inc*., which involved continued litigation related to *Buttrick*, the Board again reviewed the same issue, and examining both the existence of both the power to abuse and the temptation to abuse, again concluded that no disabling conflict existed, which disqualified the Teamster local in that case from representing the employer's employees.

In the instant case, the International and, the Joint Council in particular, must approve of any collective-bargaining agreement the Petitioner may reach with the Employer. The International and, the Joint Council in particular, have the authority to

[14] Specifically, after the Board in *Buttrick* examined the power of the International to influence bargaining activity by locals, it concluded that:

> Save for trusteeship, the general tenor of these powers is that of limited, procedurally safeguarded, restraint on local bargaining activity. The general president has no authority either to formulate local bargaining goals or to compel strike action to carry them out. The powers in respect to strike votes, contract approval, arbitration, financial aid, et al., are by their terms limited to inhibiting or discouraging action which is initiated by the local itself. In addition, the constitution impliedly places primary authority over bargaining in the locals by disavowing International responsibility for local strikes and boycotts (art. XII, sec. 1(c)) and for contract liability (art. XII, sec. 11(c) and sec. 14). The question of whether to join into area, national, or industry bargaining is also decided by the locals (art. XVI, sec. 4(a)), and only then do the powers of the general president in these negotiations come into play. While International trusteeship could eliminate local control over bargaining, this danger appears to be somewhat muted by Sec. 302 of the Landrum-Griffin Act (29 U.S.C. § 462) which limits the purpose for which trusteeships can be imposed, and the pursuit of a pension fund financial interest would appear to fall outside the list of permitted objectives. In sum, we find that the constitutional powers permit only a limited entry into local bargaining activity, and that the local constitutes the initiating and pervasive force in dealings with employers.
>
> In addition, we find no evidence that the International has been tempted by the fund's loans to Whiting to exercise its limited constitutional powers over Local 380. There is also no indication on this record that the general president has ever sought to alter Local 380's bargaining conduct for any reason. The possibility that he might intervene in Local 380's negotiations and submerge the employees' representational interests in favor of protecting the Whiting loans is, in our opinion, too remote to justify overturning the employees' clear-cut selection of Local 380 as their bargaining agent. This is not to say that we think the Whiting loans are completely insignificant to Local 380's continued existence as statutory bargaining agent. We shall be most sensitive to future conduct evidencing pressure, constitutional or other, to bend Local 380's bargaining course towards loan protection. Existing procedures are available under the Act to curtail such pressure or, if necessary, even to withdraw Local 380's certification in the event of impermissible pressures. But, as this record stands, it does not support disqualification of Local 380.

sanction strike activity by their local unions and have the authority to discipline members of the Petitioner for disloyalty to the Teamsters. The International and, the Joint Council in particular, have the authority to require the Petitioner to assist Local 228 in its efforts to decertify the Employer. As noted above, the Employer has directed its staff employees in the petitioned-for unit to oppose Local 228's decertification efforts, to inform the employees it represents in Unit 7 of its negative views of Local 228 officials, and some of the unit staff employees have refused to do so, citing their affiliation with the Teamsters. Although there is no evidence in the record that the Joint Council has directed that these employees refuse to comply the Employer's directives in this regard, the record evidence clearly establishes that it has the authority to do so and to discipline those employees who refuse to comply with its directives.

After reviewing the record evidence and the applicable case law, I have concluded that the International and, the Joint Council in particular, possess power to affect the bargaining of the Petitioner and the Employer and that "*an innate or proximate danger*" exists that they will use this power to shape or alter the course of bargaining between the Employer and the Petitioner. Furthermore, with regard to the existence of a temptation to use their power to interfere with bargaining, the record establishes that such a temptation is very strong in this case, since Local 228's success in its effort to decertify and replace the Employer would add 7,000 new members to the Teamsters Union.

In addition, while there is no evidence that the Petitioner has directly engaged in Local 228's efforts to decertify and replace the Employer, the evidence discloses that Local 228 held a meeting at its offices where the secretary/treasurers of the Petitioner and Local 228 spoke to employees in the petitioned-for unit, and the secretary/treasurer of the

Petitioner passed out authorization cards to such employees. The employees attending this meeting are the very same staff employees on whom the Employer must rely in opposing Local 228's efforts to decertify the Employer. The petition in this case was filed on the same day that Local 228 disclaimed interest in representing the employees at issue in this case. The conduct of the two locals in jointly conducting a meeting where the Petitioner passed out authorization cards to the petitioned-for employees, the timing of Local 228's disclaimer and the filing the petition in this case may reasonably be read as assistance by Local 228 to the Petitioner. By the action of the two locals with regard to this meeting, the association and bond between them has already been made plain to the Employer as well as in the minds of the Employer's employees. Thus, while an argument could be made that there is a strong legitimate interest for a union that has been forced to disclaim interest in representing a unit of employees to make an effort to secure new representation for them, in circumstances such as this, where the disclaiming union is also seeking to decertify an employer, its act of assistance to a sister local in taking over that unit could reasonably be viewed with distrust by any employer. By making this observation, however, I do not find or conclude that any wrongdoing by Local 228 and/or the Petitioner occurred in holding this meeting.

As indicated above, in order to find that a clear and present danger of interference with the bargaining process exists, I need not find that the Petitioner, the International or the Joint Council have actually engaged in wrongdoing or caused damage to the Employer. Rather, it is sufficient to show that *"an innate or proximate danger"* of such interference exists, which has created the type of "inherent distrust" of the Petitioner which would "drastically change[] the climate at the bargaining table from one where

there would be reasoned discussion in a background of balanced bargaining relations upon which good-faith bargaining must rest to one in which mistrust is, at best, intensified."

In sum, given the controls that the International and, the Joint Council in particular, possess and may exert over the Petitioner, and the facts that Local 228 and the Petitioner are members of the Joint Council, that the International is assisting Local 228 in its efforts to decertify the Employer, and that Local 228 assisted the Petitioner in obtaining authorization cards in this case, I find that "*an innate or proximate danger*" of interference with the collective-bargaining process exists such as to disqualify the Petitioner from representing the employees at issue in this case.[15] As the Board noted in *Teamsters 249* "a union which has allegiances conflicting with the purposes of protecting and advancing the interest of the employees it represents, as does the Petitioner in this case, cannot be a proper representative of these employees."[16] 139 NLRB at 607.

Accordingly, I find that Petitioner is disabled and disqualified from representing the employees in the petitioned-for unit, and for this reason I dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

---

[15] However, I also note that should Local 228 become the representative of Unit 7 and the employer of the employees in this unit, the Petitioner would be disqualified from serving as the collective bargaining representative of the unit under the above cited cases. See *Teamsters Local 249; Oregon Teamsters Security Plan Office*.

[16] Citation omitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C. by January 24, 2005.

Dated at San Francisco, California, this 10th day of January 2005.

_____

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735